

REMARKS:

Applicant thanks the Examiner for the Office Action mailed on August 10, 2006. After entry of this amendment, claims 1-2, 7, 10, 13-14, and 21-23 are pending. Claims 3-6, 8-9, 11-12, and 15-20 have been canceled. The Applicant respectfully requests reconsideration of the previously-presented claims, as well as consideration of the newly-presented claims in light of the following remarks.

In the Office Action of August 10, 2006, the Examiner first rejected claims 1, 2, 7, and 13 under 35 U.S.C. § 103(a) as being unpatentable over Cesare, United States Patent No. 6,105,842, in view of Zheng, United States Patent No. 6,360,761. The Examiner asserted that Cesare discloses a protective liner in the shape of a pickup truck bed comprising a floor and normal walls made from a flexible, substantially impermeable material. The Examiner further asserted that Cesare discloses that the liner material maintains its shapes when standing alone. However, the Examiner stated that Cesare does not teach the use of a sleeve and a coilable resilient frame. The Examiner then stated that Zheng discloses a collapsible structure capable of use as a liner with a floor having a coilable resilient frame in a sleeve affixed to the perimeter of the floor to maintain the shape of the structure when standing and to allow the structure to be collapsed for storage. The Examiner then asserted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a coilable resilient frame in a sleeve affixed to the perimeter of the floor of the liner of Cesare.

Turning first to the Cesare reference, which is entitled "Pickup Truck Storage Bag," it is respectfully submitted that the elements relied upon by the Examiner do not sufficiently meet the elements of the claims to which they were applied. Upon reading the specification of Cesare, it becomes apparent that Cesare teaches nothing more than a single sheet of fabric material that may be folded to form a bag. It is expressly noted in Cesare that the storage bag is made from a single piece of material so that there are fewer seams (Col. 2, lines 34-35). Although the Examiner asserts that

Cesare discloses that the liner maintains its shape when standing alone, the Examiner has previously noted that Cesare does not teach how this is accomplished. Since, by the Examiner's own admission, Cesare does not provide any enabling disclosure regarding this structure, as required by 35 U.S.C. § 112, this functional statement cannot be properly applied against the Applicant in a rejection under 35 U.S.C. § 103(a).

In marked contrast to Cesare, claims 1 and 7 of the instant application require a floor having a perimeter, a sleeve surrounding and affixed to the perimeter of the floor, and a wall affixed to the sleeve. From the plain language of claims 1 and 7, it is clear that the sleeve and wall surround the floor, that is to say, they are continuous. The Examiner's assertion that the side panels 48, 50, 52, and 54 of Cesare can constitute the wall of claims 1 and 7 cannot be proper in light of the clear fact that the side panels of Cesare are disjointed, independent elements that are not connected to the floor of Cesare by a sleeve having a frame disposed therein, but rather by a plurality of individual panels 32, 33, 34, 35, 36, 37, 38, and 39. Furthermore, Cesare does not teach that the floor defines a plane or that the walls are normal to the plane formed by the floor. Although the Examiner asserts that Cesare teaches normal walls, this statement is not supported by the disclosure in Cesare, which again shows only a sheet of fabric that may be folded and thus constitutes hindsight.

Even if Cesare did teach the elements that the Examiner asserts that it teaches, the Cesare reference cannot be properly combined with the Zheng reference. The fact that this combination represents an impermissible hindsight reconstruction is apparent from the Examiner's own words, which state that the addition of frame elements to a liner would be obvious in order to provide means for the liner to maintain its shape when standing and be collapsed for storage. However, it is apparent upon review of the references of record that none of those references teach a liner that includes a collapsible support structure. Rather, the references teach foldable fabric liners that lack support structures. This teaching is found only in the Applicant's disclosure. In fact, Cesare teaches away from inclusion of frame elements in sleeves, as required by claims 1, 2, 7, and 13 of the instant

application. Cesare makes explicit that its design is intended to minimize the number of seams in the fabric material and to minimize the tension in the fabric material. Incorporation of a sleeve in the storage bag of the Cesare reference would necessarily require additional seams. Furthermore, the flexible and coilable resilient frame required by claims 1, 2, 7, and 13 is specifically intended to place tension on the sleeve, which, in turn, places tension on the floor to thereby render the cargo liner relatively flat while still flexible, and to support the walls of the liner in an upright position. In contrast, the specification of Cesare states at least three times that its design intends to minimize tension in the lightweight material from which the storage bag is constructed.

The Applicant has previously stated its objection to the combination of Cesare and Zheng, on the grounds that Zheng is non-analogous art. The Examiner's own argument in response is telling. Particularly, the Examiner states that Zheng teaches collapsible structures that may be twisted and folded to reduce the overall size of the structures to facilitate convenient storage and use. The Examiner asserts that Zheng's teaching is pertinent to the problem being addressed. Interestingly, the Examiner identifies the problem being addressed as the need for a flexible, resilient frame to allow the liner to stand alone and be collapsed for storage. The Applicant respectfully submits that one would only recognize that a flexible, resilient frame could be added to a protective liner for a vehicle storage area on the basis of Applicant's own disclosure. The Examiner's statement that the structure of Zheng could be used as a liner is hindsight, as this is not disclosed by Zheng. There are no references of record that teach protective liners for vehicle storage areas that have frames included in them. At some basic level, it might be true that the present invention and the Zheng reference both regard structures that may be collapsed. But as made clear by the very case that the Examiner cites, In Re Oetiker, 977 F.2d 1443 (Fed. Cir. 1992), the mere fact that there is some functional similarity between two articles does not make them analogous. Particularly, in Oetiker, a hook-and-eye fastener for use in garments was held non-analogous to a hook assembly on a hose clamp. This

holding was based on the fact that a person of ordinary skill in the art seeking to solve the problem of fastening a hose clamp would not look to fasteners for garments.

Oetiker, analogous to this case. There is no evidence that a person of ordinary skill in the art would look to children's play structures in solving the problem of devising a collapsible protective liner for a vehicle storage area. In this case, the Examiner has described the problem to be solved in terms of the reference that the Examiner seeks to apply. The Examiner's very statement of the problem to be solved is based on knowledge gained only from the Applicant's specification. This type of hindsight infused analogousness argument cannot be proper, as it would support the analogousness of any reference to any other reference. Thus, the Applicant respectfully requests that the Examiner reconsider the pertinence of combining the Cesare and Zheng references.

Although the Examiner purported to respond to the Applicant's argument that there is no suggestion to combine the references, the Examiner did not address the combination of Cesare and Zheng as specifically addressed by the Applicant. In light of the fact that Cesare teaches away from the addition of a tension-inducing frame element, it is respectfully requested that the Examiner reconsider the propriety of combining the Cesare reference with the Zheng reference.

The Examiner next rejected claims 10-12 and 14-16 under 35 U.S.C. § 103(a) as being unpatentable over Cesare and Zheng, and further in view of Dearborn. The Applicant first notes that claims 15-16 and 11-12 have been canceled. With regard to claims 10 and 14, the Applicant continues to maintain that these claims are separately patentable, but nonetheless believes that this issue need not be revisited in light of the arguments above regarding claims 1 and 7.

The Examiner next rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Cesare in view of Zheng, Dearborn, and Lester, et al. The Applicant has canceled claim 17.

The Examiner next rejected claims 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Cesare as modified by Zheng in view of Kirimoto, et al., United States Patent No. 3,997,507.

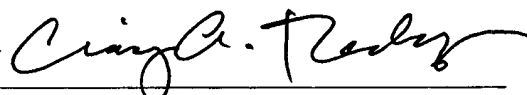
The Applicant has canceled claims 18 and 19.

The Examiner next rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Cesare as modified by Zheng, Dearborn, and Lester, et al., in view of Kirimoto, et al. The Applicant has canceled claim 20.

The Applicant has added new claims 21-23 to better claim the invention. No new matter is added in these claims. The Applicant respectfully submits that none of the references of record teach or suggest the invention as set forth in new claims 21-23.

The Applicant thanks the Examiner for his consideration of the above remarks and the new claims. If the Examiner should have any questions regarding this paper, he may contact Applicant's undersigned counsel at (734) 662-0270.

Respectfully Submitted,
YOUNG & BASILE, P.C.

A handwritten signature in black ink, appearing to read "Craig A. Redinger", written over a horizontal line.

Craig A. Redinger
Reg. No. 55,886

DATED: January 02, 2007